IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

MACA.No. 560 of 2003

OPMV.946/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT/3RD RESPONDENT IN M.V.O.P:

THE ORIENTAL INSURANCE CO. LTD.,
MUVATTUPUZHA, REP. BY THE ASSISTANT MANAGER
MOTOR THIRD PARTY CLAIMS CELL, REGIONAL OFFICE,
NORTH RAILWAY STATION ROAD, ERNAKULAM,
COCHINI-682018.

BY ADV. SRI.M.JACOB MURICKAN

RESPONDENTS: PETITIONERS & RESPONDENTS 1 & 2 IN M.V.O.P:

1. JOHN, S/O. ULAHANNAN, ELUVANGAL HOUSE,
CHAIPINKUZHI, KUTTICHIRA VILLAGE.

2. PLAZEEN (MINOR), AGED 9 YEARS,
S/O. JOHN, DO. DO. REPRESENTED BY THE 1ST
RESPONDENT (FATHER) AS NEXT FRIEND AND GUARDIAN.

3. SHALY JOHN (MINOR), AGED 5 1/2 YEARS, D/O. JOHN, DO. DO.

4. PLEXY (MINOR), AGED 4 YEARS, D/O. JOHN, DO. DO.

5. A.V.SHAJI, S/O. UNNI, AMBATTUPARAMBIL HOUSE,
PERAMBRA P.O., THRISSUR DISTRICT.

6. SHIJU, S/O. OUSEPH, VADAKKETHALA HOUSE, PUTHUKAVU
DESOM, KODAKARA VILLAGE, KODAKARA P.O.

BY ADV. SRIP.G.SURESH
SRI.DINESH R.SHENOY
SRI.T.N.MANOJ

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.A.C.A.No. 560 of 2003

JUDGMENT

Koshy, J.

This appeal is filed by the Insurance Company questioning its liability to pay compensation. The dependents of a motor accident victim filed a claim petition for compensation before the Motor Accidents Claims Tribunal, Irinjalakuda claiming Rupees four lakhs. The deceased was travelling in a tempo van driven by the second respondent. It collided with a mini lorry, driven by the fifth respondent. Both the vehicles were insured by the same Insurance Company, i.e., Oriental Insurance Company. The Tribunal found that the accident occurred solely due to the negligence of the second respondent driver, who was driving the tempo van, in which the deceased was travelling. The Tribunal calculated a total compensation of Rs.2,34,000/- and directed the appellant Insurance Company to

deposit the same.

2. Originally, it was contended by the appellant Insurance Company that the deceased was a gratuitous passenger and therefore, he is not entitled to compensation. Thereafter, it was contended in the written statement that the vehicle, in which the deceased was travelling, was insured as a goods vehicle and therefore, it is not liable to indemnify the owner for the death of the passenger travelling in a goods vehicle. It was further contended that even if the tempo van, in which the deceased was travelling, is a passenger vehicle, since it was insured as a goods vehicle and paid premium for the same, it is not liable to pay dependents compensation. The insurance policy was marked as Exhibit B1. It shows that the policy was issued by the appellant Insurance Company for Bajaj Tempo with Reg.No.KDE 3141 as a public carrier valid from 24.11.1994 to 23.11.1995. It is a comprehensive policy and for damage to the vehicle, premium paid was Rs.1995/-. For liability

to public risk Rs.1245/-, for covering employees Rs.30/- and for third party property damage Rs.75/- were paid as the premium. It is also seen that in the column for non-fare paying passenger no premium was paid. But, the Tribunal did not accept the above contentions, as the R.C.Book of the vehicle was not produced to show that whether he is a passenger in a goods vehicle or in a transport vehicle. In any event, his dependents are entitled to get compensation, as held by the Apex Court in **New India Assurance Co.Ltd. v. Satpal Singh** (AIR 2000 SC 235).

3. We are of the view that the Insurance Company is bound only by the terms of the policy. Exhibit B1 policy shows that the vehicle in question was insured only as a public carrier and not as a passenger vehicle. There is no case that the deceased was travelling in the goods vehicle with his own goods. It is submitted by the claimants that the tempo van was having a contract carriage permit and the above permit was produced

at the time when Section 140 application was filed, even though that was not specifically marked. Even if the vehicle was a passenger vehicle, it was insured as a public carrier and the owner of the vehicle will not get the benefit because of his own fault. As far as he is concerned, liability of the Insurance Company to him is contractual and the Company is bound by the terms of the policy only. Apart from the above, the decision relied on by the Tribunal in **Satpal Singh's case** (supra) was overruled by the Apex Court in **New India Assurance Co. Ltd. v. Asha Rani** (2003 (1) KLT 165 (SC)). It was also contended that third party is not affected by the fraud played by the owner of the vehicle, while taking the policy. In **National Insurance Co. Ltd. v. Baljit Kaur** (AIR 2004 SC 1340), **Oriental Insurance Co. Ltd. v. Nanjappa** (AIR 2004 SC 1630) and in various other cases, it has been held that since **Satpal Singh's case** (supra) was overruled by **Asha Rani's case** (supra) only in 2003, in prior

cases, the Insurance Company should deposit the amount and the Insurance Company is entitled to recover the same from the owner of the vehicle (insured). Here, part of the amount was already deposited by the Insurance Company. On the facts of this case, we direct the appellant Insurance Company to deposit the entire balance amount as awarded and recover the same from the insured, in execution of the award itself.

The appeal is allowed in part.

(J.B.Koshy, Judge)

5th June, 2007

(K.P.Balachandran, Judge)

tkv